IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 21901 of 2007(G)

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PETITIONERS:

1. T.K. JAMEELA,
   THAIKANDIYIL HOUSE, EDACHERY, THALASSERY.

2. T.K. FATHIMA,
   THAIKANDIYIL HOUSE, EDACHERY, THALASSERY.

3. T.K. KUNHAMMED,
   THAIKANDIYIL HOUSE, EDACHERY, THALASSERY.

4. USMAN KATTIL,
   KATTIL HOUSE, EDACHERY, THALASSERY.
   (PETITIONERS 1 TO 3 ARE REPRESENTED BY POWER OF ATTORNEY HOLDER THE 4TH PETITIONER USMAN KATTIL, KATTIL HOUSE, EDACHERY, THALASSERY).

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

1. STATE OF KERALA,
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   LOCAL SELF ADMINISTRATION, THIRUVANANTHAPURAM.

2. THALASSERY MUNICIPALITY,
   REPRESENTED BY ITS SECRETARY, THALASSERY.

3. MUNICIPAL ENGINEER,
   THALASSERY MUNICIPALITY, THALASSERY.

R1 BY ADV. SRI.K.J.MOHAMMED ANZAR, SR. GOVT. PLEADER.
R2 & R3 BY ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**PIUS C. KURIAKOSE, J.**

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W.P.(C) No. 21901 OF 2007

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Dated this the 13th day of November, 2007

**JUDGMENT**

Sri.T.M.Abdul Latheef, counsel for the petitioner submits that even without examining the question as to whether the view of the Tribunal for Local Self Government Institutions which seems to be taken on the basis of a judgment of this Court, relief can be given to the petitioner on the basis of the principles laid down in **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222] and by the Division Bench of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465].

The application submitted by the petitioner for permit for the construction of a commercial building was rejected by the Thalassery Municipality on the reason that the property where the building is proposed to be constructed falls within the area of the DTP Scheme, where a 20 meter road is proposed. Obviously, all these years, the DTP Scheme in so far as it pertains to the 20 meter wide road has not been implemented by utilising any portion of the petitioner's property. The Full Bench of this Court in **Francis v. Chalakkudy Municipality** [1999 (3) 560] held that under comparable circumstances it can be held that the scheme has become oppressive. Concededly, no notification has so

far been promulgated under Section 4(1) of the Land Acquisition Act for acquisition of any portion of the petitioner's property. The Supreme Court also has practically approved these principles in **Raju Jethmalani**'s case(supra). In my opinion the local authority is not justified in insisting that the petitioners who are co-owners of the property must keep their property idle on the reason that there is a proposal to have a 20 meter road as per the DTP scheme. Setting aside Exts.P3 and P6, I dispose of the Writ Petition issuing the following directions:

Petitioners are directed to file an affidavit undertaking that in the event of a notification under Section 4(1) of the Land Acquisition Act for acquisition of any portion of their property being promulgated within a period of 9 months from today, they will not claim any compensation for the building to be put up by them on the strength of the permit to be issued to them. Once such an affidavit is filed, the Municipality will reconsider the plan submitted by the petitioners for construction of the commercial building and pass fresh orders. If the plan is otherwise in order, they will grant that application and issue permit. In other words, existence of the proposal to have a 20 meter wide road as per the DTP scheme, will not be a reason for rejecting the plan. It is made clear that even after the expiry of 9 months in the event of any genuine public

purpose it will be open to the Municipality to acquire the property in question. Under such an event the petitioners will be entitled for adequate compensation not only for the land but also for the building to be constructed by them.

**PIUS C. KURIAKOSE, JUDGE**

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